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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re N.H.,

a Person Coming Under the Juvenile
Court Law.

B205563

(Los Angeles County
Super. Ct. No. JJ11585)

THE PEOPLE,

Plaintiff and Respondent,

v.

N.H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, S. Robert Ambrose, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed as modified.

Bruce G. Finebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The minor, N.H., appeals from the juvenile court's order continuing his wardship after finding he had committed several misdemeanor offenses. We accept the People's concession the court miscalculated the minor's maximum period of physical confinement and affirm the order as modified.

PROCEDURAL BACKGROUND

The People filed a petition pursuant to Welfare and Institutions Code section 602 on September 2, 2007, alleging the minor, then 15 years old, had committed false imprisonment by violence. (Pen. Code, § 237, subd. (a).)¹ The petition was sustained, and the minor was ordered into camp community placement.

Two months later, the minor provoked fist fights with some other camp wards and physically resisted being detained by probation officers. On November 15, 2007, the People filed a second petition under Welfare and Institutions Code section 602 alleging the minor had committed misdemeanor battery (§ 242; count 1), misdemeanor incitement to riot (§ 404.6, subd. (a); count 2), felony assault upon a custodial officer (§ 241.1; count 3), and felony resisting an executive officer (§ 69; counts 4, 5, and 6).

Following the jurisdiction hearing, the juvenile court sustained the petition as to counts 1 and 3 through 6, declared the offenses to be misdemeanors, and dismissed count 2, misdemeanor incitement to riot. At the disposition hearing, which immediately followed, the court ordered that the minor remain a ward of the court and that the previous order of camp community placement remain in full force and effect with the

¹ The probation officer's report, from which this information was obtained, lists Penal Code section 182, subdivision (a)(1), which applies to conspiracy to commit a crime. All further statutory references are to the Penal Code unless otherwise indicated.

minor to serve an additional five months, but in a different camp facility. The court determined the maximum period of physical confinement was two years six months.

DISCUSSION

Section 1170.1, subdivision (a),² “provides certain limitations on subordinate terms including limitation to one-third the base term. Although the section on its face applies only to sentences for felonies, in the case of a juvenile whose term of confinement is set pursuant to Welfare and Institutions Code section 726,^[3] this limitation is also applicable to misdemeanor terms. (*In re Eric J.* (1979) 25 Cal.3d 522, 538)” (*In re Luis H.* (1986) 187 Cal.App.3d 546, 549.)

² Section 1170.1, subdivision (a), states, in relevant part, “when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, [and] the subordinate term The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed”

³ Welfare and Institutions Code section 726, subdivision (c), states, in relevant part, if “the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court. [¶] As used in this section and in Section 731, ‘maximum term of imprisonment’ means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code [¶] If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the ‘maximum term of imprisonment’ shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code”

Here, the juvenile court apparently calculated the maximum period of physical confinement by assuming a six-month maximum term for each of the five misdemeanor offenses for an aggregated term of 30 months or two years six months.⁴ However, only count 1, battery, has a six-month maximum term; the remaining four counts each have a one-year maximum term. Accordingly, pursuant to section 1170, subdivision (a), the maximum period of confinement is not two years six months, but two years two months, consisting of one of the one-year terms as the principal term, plus one-third of each of the remaining four subordinate terms.

DISPOSITION

The December 11, 2007 disposition order is amended to reflect that the minor's maximum period of physical confinement is two years two months.⁵ As modified the order is affirmed.

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JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.

⁴ The juvenile court apparently elected not to include the previously sustained petition in determining the maximum period of confinement. (See Welf. & Inst. Code, § 726, subd. (c).)

⁵ The minute order mistakenly shows the maximum period of physical confinement as "3 years 6 months."